

**FEDERAL ELECTION COMMISSION
999 E STREET, N.W.
WASHINGTON, D.C. 20463**

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2003 AUG 20 P 2: 24

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 5039R

DATE COMPLAINT FILED: July 6, 2000

DATE OF NOTIFICATIONS: July 11, 2000

DATE ACTIVATED: July 30, 2001¹

EXPIRATION OF STATUTE

OF LIMITATIONS: June 17, 2005

COMPLAINANT:

**Roy Temple, Executive Director
Missouri State Democratic Committee**

RESPONDENTS:

**Federer for Congress Committee
Thomas M. Busken, as treasurer
William J. Federer
Mark Ludwig**

23-04-406-1858

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9 INTERNAL REPORTS CHECKED:

Disclosure Reports

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11 FEDERAL AGENCIES CHECKED:

None

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13 RELEVANT STATUTES:

2 U.S.C. § 431

2 U.S.C. § 434(b)

2 U.S.C. § 439a

2 U.S.C. § 441a(a)

2 U.S.C. § 441a(f)

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20 I. INTRODUCTION

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26 The complainant

alleges that

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29 the Committee received an impermissible \$5,000 contribution,
30 which it failed to report (MUR 5039R);

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32 the Committee's campaign manager attempted to

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"turn over" a campaign poll to his opponent's campaign for \$7,000 and asked whether the
opponent's campaign manager would be interested in information about other alleged violations
(MUR 5039R):

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Law⁴**

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14 **2. Excessive Contributions**

15 The Act defines the term "contribution" as "any gift, subscription, loan, advance, or
16 deposit of money or anything of value made by any person for the purpose of influencing any
17 election for Federal office." 2 U.S.C. § 431(8)(A)(i). The Act limits the amount that persons
18 other than multicandidate committees may contribute to any candidate for federal office to
19 \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). Candidates and political committees are
20 prohibited from knowingly accepting contributions in excess of the limitations of Section 441a.
21 2 U.S.C. § 441a(f). When a committee receives an excessive contribution, the committee must
22 either refund the excessive portion of the contribution or the contributor must provide the

⁴ The activity in this matter is governed by the Act and Commission regulations in effect during the 1999-2000 election cycle, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations exclude the changes made by BCRA.

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committee with a redesignation or redistribution, both within 60 days after receipt of the
contribution. 11 C.F.R. § 103.3(b)(3).

3. Personal Use

Using campaign funds for personal use is prohibited. 2 U.S.C. § 439a. Personal use is
any use of funds in a campaign account of a candidate to fulfill a commitment, obligation or
expense of any person that would exist irrespective of the candidate's campaign or
responsibilities as a federal officeholder. 2 U.S.C. § 439a; 11 C.F.R. § 113.1(g).

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B. Facts and Analysis

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2. Alleged Impermissible \$5,000 Contribution (MUR 5039R)

The complainant alleges that on June 17, 2000 Mr. Federer's campaign manager, Mark Ludwig, met with Democratic Missouri State Representative May Scheve. Transcripts of phone messages Mark Ludwig left for Ms. Scheve are provided in the complaint. At the meeting, Mr. Ludwig allegedly told Ms. Scheve that he contemplated quitting Mr. Federer's campaign. The complainant describes how Mr. Ludwig, in his conversation with Ms. Scheve, referenced a purported \$5,000 check, written by an individual that was deposited and used by the Committee but not reported to the Commission. Further, Mr. Ludwig allegedly claimed to have a copy of the check at his apartment and offered to show a copy of such a check to Ms. Scheve.

The Committee's response includes a statement affirmed under penalty of perjury from its treasurer Thomas Busken averring that he neither received nor is aware of any \$5,000 "personal" check. Similarly, Mr. Federer affirms in his statement, "As said candidate, I have never received nor am I aware of the Federer for Congress campaign ever receiving any personal check in the amount of [\$5,000]." Further, a letter from Mark Ludwig accompanies the Committee's response. Mr. Ludwig states that the complaint contained mischaracterizations and

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misrepresentations. Mr. Ludwig responds to the complaint's central charge with an unsworn statement that he has no knowledge of any \$5,000 "contribution by an individual" used or deposited by the Committee. The Committee's response concludes by asserting that the complaint was politically motivated.

There is a lack of specific facts provided regarding the Committee's alleged receipt of a \$5,000 impermissible contribution. Mr. Ludwig, who according to a newspaper article and the complaint purported to have personal knowledge of such a check, has denied its existence in his unsworn statement included with the Committee's response. Further, affidavits from Mr. Federer and the Committee's treasurer support the Committee's assertion that no such impermissible contribution was received, and hence no reporting obligation would arise. Thus, this Office recommends that the Commission find no reason to believe that the Federer for Congress Committee and Thomas M. Busken, as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f) in connection with the alleged failure to report a \$5,000 contribution from an individual.

Messrs. Federer and Ludwig were named as respondents in MUR 5039R. Because this Office concludes based on the available evidence that no impermissible contribution was made, this Office further recommends that the Commission find no reason to believe that William J. Federer and Mark Ludwig violated any provision of the Act in this matter.

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5. Alleged Offer to Sell Committee Poll (MUR 5039R)

The complainant in MUR 5039R alleges that Mr. Ludwig offered to "turn over" a Committee campaign poll to his opponent's campaign for \$7,000. Because there is no evidence that this offer was accepted, the poll was not converted to personal use because Mr. Ludwig did not actually benefit from his alleged attempt to use the poll for personal gain. 2 U.S.C. § 439a.

1 Thus, this Office recommends that the Commission find no reason to believe that Mark Ludwig
2 violated any provision of the Act in MUR 5039R.

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18 **IV. RECOMMENDATIONS**

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20 **In MUR 5039R:**

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1. Find no reason to believe that Federer for Congress Committee and Thomas M. Busken, as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f).

2. Find no reason to believe that Mark Ludwig violated any provision of the Act in MUR 5039R.
3. Find no reason to believe that William J. Federer violated any provision of the Act in MUR 5039R.
4. Close the file in MUR 5039R.
5. Approve the appropriate letters.

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Lawrence H. Norton
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8/19/23
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